



02-12-07

2
AP

Certificate of Mailing By "U.S. Certified Mail" Under 37 C.F.R. 1.8	
CERTIFIED MAIL" Mailing Label Number: <u>EV 826340048 US</u>	Date of Deposit: <u>2/9/2007</u>
I hereby certify that this paper and/or fee is being deposited with the United States Postal Service "CERTIFIED MAIL POST OFFICE TO ADDRESSEE" service under 37 C.F.R. 1.8 on the date indicated above and is addressed to the Commissioner For Patents, Alexandria, VA 22313-1450.	
Name: <u>Feng Elizondo</u>	<u>2/9/2007</u>
<u>[Signature]</u> Signature	Date

The Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ATTN: Mail Stop Appeal Brief-Patents

Re: U.S. Utility Patent Application
Appl. No. **09/823,089** Filed **03/29/2001**
For: **Integrated Network for Monitoring Remote Objects**
Inventor(s): **Fernandez, et al.**
Docket No.: **FERN-P001B**

Sir:

The following documents are forwarded in response to the Notification of Non-Compliant Appeal Brief, dated 01/09/2007:

1. Copy of Notification of Non-Compliant Appeal Brief;
2. Amended Appeal Brief;
3. A return postcard.

It is respectfully requested that the attached postcard be stamped with the filing date of the above documents and returned to the addressee as soon as possible.

Applicants do not believe that any payment of fee is needed in association with this communication. However, should Applicants inadvertently miscalculated the required fee, the Commissioner is hereby authorized to charge any necessary amount associated with this communication or credit any overpayment to **Deposit Account No: 500482**.

Respectfully submitted,

2/9/2007
Date

[Signature]
DENNIS S. FERNANDEZ, ESQ.
Reg. No. 34,160

FERNANDEZ & ASSOCIATES, LLP
PATENT ATTORNEYS
Customer No: 22877
(650) 325-4999
(650) 325-1203 FAX
EMAIL: iploft@iploft.com



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

Inventors: Fernandez, et al.)	Attorney Docket No.: FERN-P001B
)	
Examiner: VO, TUNG T.)	Examiner: Vo, Tung T.
)	
Application No. 09/823,089)	Art Unit: 2621
)	
Filed: 03/29/2001)	
)	
For: INTEGRATED NETWORK)	
FOR MONITORING REMOTE)	
OBJECTS)	
)	
)	

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

AMENDED APPEAL BRIEF
IN SUPPORT OF APPELLANTS' APPEAL
TO THE BOARD OF PATENT APPEALS AND INTERFERENCES

In reply to the Notification of Non-Compliant Appeal Brief, mailed 01/09/2007, Appellants submit the following Amended Brief pursuant to 37 CFR 41.37 in support of an appeal from the final rejection by the Examiner, dated October 13, 2005. Appellants filed a notice of appeal under § 41.31 on April 12, 2006. Additionally, Appellants assert that the following brief does not include any new or non-admitted amendment, affidavit, or other evidence. Appellants respectfully request consideration of this appeal by the Board of Patent Appeals and Interferences for allowance of the above-captioned patent application.

TABLE OF CONTENTS

	<u>PAGE</u>
I. Real party in interest	4
II. Related appeals and interferences	4
III. Status of claims	4
IV. Status of amendments	5
V. Summary of claimed subject matter	5
VI. Grounds of rejection to be reviewed on appeal	7
VII. Argument	8
A. The rejection of Claims 37-38, 42, 44, 52-54, 57, and 59 as unpatentable under 35 U.S.C. §102(e) over DeLorme et al (US 5,948,040) should be withdrawn.	8
B. The rejection of Claim 39 as unpatentable under 35 U.S.C. § 103(a) over DeLorme et al. (US 5,948,040) in view of Hollenberg (US 6,091,956) should be withdrawn.	12
C. The rejection of Claims 43 and 58 as unpatentable under 35 U.S.C. 103(a) over DeLorme et al. (US 5,948,040) in view of Heikari et al. (US 5,930,723) should be withdrawn.	14
D. The rejection of Claims 40-41, 55-56 as unpatentable under 35 U.S.C. 103(a) over DeLorme et al. (US 5,948,040) in view of Joao et al. (US 6,047,270) should be withdrawn.	15
E. The rejection of Claims 45 and 60 as unpatentable under 35 U.S.C. 103(a) over DeLorme et al. (US 5,948,040) in view of McGregor et al. (US 6,243,574 B1) should be withdrawn.	15
F. The rejection of Claims 46 and 61 as unpatentable under 35 U.S.C. 103(a) over DeLorme et al. (US 5,948,040) in view of Rudrapatna et al. (US 6,052,598) should be withdrawn.	15
G. The rejection of Claims 47-48 and 62-63 as unpatentable under 35 U.S.C. 103(a) over DeLorme et al. (US 5,948,040) in view of Kennedy, III et al. (US 6,301,480) should be withdrawn.	16
H. The rejection of Claims 49 and 64 as unpatentable under 35 U.S.C. 103(a) over DeLorme et al. (US 5,948,040) in view of David et al. (US 5,441,047) should be withdrawn.	16
I. The rejection of Claims 50 and 65 as unpatentable under 35 U.S.C. 103(a) over DeLorme et al. (US 5,948,040) in view of Uppaluru (US 5,915,001) should be withdrawn.	16

J. The rejection of Claims 51 and 66 as unpatentable under 35 U.S.C. 103(a) over DeLorme et al. (US 5,948,040) in view of Almeida et al. (US 6,356,758) should be withdrawn.17

VIII. Claims Appendix19

IX. Evidence Appendix NONE

X. Related Proceedings Appendix.....NONE

I. Real party in interest

The real party in interest is Dennis Fernandez, an individual, having a residence at 1175 Osborn Avenue, Atherton, CA 94027. He is also the U.S. Patent Attorney prosecuting this appeal.

II. Related appeals and interferences

To the best of Appellant's knowledge, there are no appeals or interferences related to the present appeal, which will directly affect, be directly affected by, or have a bearing on the Board's decision.

III. Status of claims

Claims 37-66 are currently pending and each claim stands rejected and entered by the Examiner for purposes of appeal. Claims 1-36 have been cancelled. Claims 37 and 52 are independent claims.

Previously in Final Office Action mailed on October 13, 2005, Examiner rejected claims 37-38, 42, 44, 52-54, 57, and 59 as being anticipated by DeLorme et al. under 35 U.S.C. 102(e). Examiner rejected claim 39 as being unpatentable over DeLorme et al in view of Hollenberg under 35 U.S.C. 103(a), claims 43 and 58 as being unpatentable over DeLorme et al. in view of Heikari et al. under 35 U.S.C. 103(a), claims 40-41 and 55-56 as being unpatentable over DeLorme et al. in view of Joao et al. under 35 U.S.C. 103(a), claims 45 and 60 as being unpatentable over DeLorme et al. in view of McGregor et al. under 35 U.S.C. 103(a), claims 46 and 61 as being unpatentable over DeLorme et al. in view of Rudrapatna et al. under 35 U.S.C. 103(a), claims 47-48 and 62-63 as being unpatentable over DeLorme et al. in view of Kennedy,

III et al. under 35 U.S.C. 103(a), claims 49 and 64 as being unpatentable over DeLorme et al. in view of David et al. under 35 U.S.C. 103(a), claims 50 and 65 as unpatentable over DeLorme et al. in view of Uppaluru under 35 U.S.C. 103(a), and claims 51 and 66 as being unpatentable over DeLorme et al in view of Almeida et al. under 35 U.S.C. 103(a).

IV. Status of amendments

All claims 37-66 on appeal are provided in the **Appendix**, as filed in Amendment dated November 1, 2005.

V. Summary of claimed subject matter

The subject matter of the invention, defined in independent claims 37 and 52, is related to remote surveillance and communications technology, particularly to integrated fixed and mobile network electronics and related software for object attribute processing (See Appellant's Specification page 1, lines 7-9; page 2, lines 19-20; and FIG. 1).

Specifically, the claimed subject matter pertains to a cellphone (page 12, lines 8-28; and FIG.1, item 4 "Target Unit") for communicating with a networked controller (page 12, lines 12 and 27; and FIG. 1, item 6 "Controller") comprising a wireless communicator (page 12, lines 8-28; and FIG. 1, item 46 "Communicator") for communicating remotely with a networked controller via a network (page 5, line 27-page 6, line 5; page 3, line 21-page 5, line 15; and FIG. 1, item 8 "Network"); a locator for providing a cellphone location to the networked controller via the wireless communicator (page 10, lines 2-4; page 11, line 29-page 12, line 12; and FIG. 1, item 42 "Locator"); a sensor for providing an image, audio, or video signal of a cellphone user for transmission to the networked controller via the wireless communicator (page 10, lines 7-15;

and FIG. 1, item 44 “Sensor”); and a processor for accessing a communication module for enabling voice or video over Internet-Protocol streaming via the wireless communicator (page 9, lines 20-27; FIG. 2, item 48 “Processor;” page 17, line 30-page 18, line 15; FIG. 3, item 161 “Communication;” and page 20, lines 19-25).

Also, the claimed subject matter pertains to a method for cellphone communication with a networked controller comprising the steps of communicating by a cellphone with a networked controller via a network (page 12, lines 9-28); and providing a cellphone location (page 11, line 29-page 12, line 12), and an image, audio, or video signal of a cellphone user to the networked controller (page 10, lines 7-15); wherein the cellphone accesses a communication module for enabling voice or video over Internet-Protocol streaming (page 17, line 30-page 18, line 15; and FIG. 3, item 161 “Communication”).

Furthermore, the communication module comprising a user-customizable or reconfigurable software program (page 9, lines 20-27; page 14, lines 1-22; and page 15, line 27-page 16, line 17), firmware or circuit accessible locally in the cellphone or remotely via the network, the communication module being partitionable or uninstallable as functional component (page 14, lines 16-17), the voice or video stream being wirelessly communicated by the wireless communicator effectively via a data channel to a wireless Internet service provider (page 5, lines 2-5; page 20, lines 19-20; page 17, line 30-page 18, line 15; and FIG. 3, item 161 “Communication”); wherein the communication module is provided in layered or hierarchical arrangement (page 14, lines 18-19), such that a first-level functionality is provided by a database and an object movement module (page 14, lines 19-20), and a next-level functionality is provided by the communication module and a security module (page 14, lines 21-22).

VI. Grounds of rejection to be reviewed on appeal

- A.** Whether Claims 37-38, 42, 44, 52-54, 57, and 59 are unpatentable under 35 U.S.C. §102(e) over DeLorme et al (US 5,948,040).
- B.** Whether Claim 39 is unpatentable under 35 U.S.C. § 103(a) over DeLorme et al. (US 5,948,040) in view of Hollenberg (US 6,091,956).
- C.** Whether Claims 43 and 58 are unpatentable under 35 U.S.C. 103(a) over DeLorme et al. (US 5,948,040) in view of Heikari et al. (US 5,930,723).
- D.** Whether Claims 40-41, 55-56 are unpatentable under 35 U.S.C. 103(a) over DeLorme et al. (US 5,948,040) in view of Joao et al. (US 6,047,270).
- E.** Whether Claims 45 and 60 are unpatentable under 35 U.S.C. 103(a) over DeLorme et al. (US 5,948,040) in view of McGregor et al. (US 6,243,574 B1).
- F.** Whether Claims 46 and 61 are unpatentable under 35 U.S.C. 103(a) over DeLorme et al. (US 5,948,040) in view of Rudrapatna et al. (US 6,052,598).
- G.** Whether Claims 47-48 and 62-63 are unpatentable under 35 U.S.C. 103(a) over DeLorme et al. (US 5,948,040) in view of Kennedy, III et al. (US 6,301,480).
- H.** Whether Claims 49 and 64 are unpatentable under 35 U.S.C. 103(a) over DeLorme et al. (US 5,948,040) in view of David et al. (US 5,441,047).
- I.** Whether Claims 50 and 65 are unpatentable under 35 U.S.C. 103(a) over DeLorme et al. (US 5,948,040) in view of Uppaluru (US 5,915,001).
- J.** Whether Claims 51 and 66 are unpatentable under 35 U.S.C. 103(a) over DeLorme et al. (US 5,948,040) in view of Almeida et al. (US 6,356,758).

VII. Argument

A. The rejection of Claims 37-38, 42, 44, 52-54, 57, and 59 as unpatentable under 35 U.S.C. §102(e) over DeLorme et al (US 5,948,040) should be withdrawn.

i. Claims 37 and 52

The issue here is whether independent Claims 37 and 52 are patentable under 102(e) as non-anticipatory over DeLorme et al. Applicants' respectfully submit that the primary reference of DeLorme has been misapplied and urge Examiner to withdraw the rejection of the current claims.

To anticipate a claim, the references must teach every element of the claim. *See* MPEP §2131. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegall Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

In the present case, Examiner has attempted to set forth every element of Claims 37 and 52 in the prior art reference of DeLorme. However, Examiner has not made a sufficient finding of an important element of the present claims in the prior art. Specifically, claim language reading:

the communication module comprising a user-customizable or reconfigurable software program, firmware, or circuit accessible locally in the cellphone or remotely via the network, the communication module being partitionable or uninstalle as functional component

is not found in the prior art reference of DeLorme. This missing element is an essential part of Applicants' claim.

Examiner argues that the aforementioned element is found in DeLorme and focuses attention on the Fig. 4 flow chart, which illustrates the dynamic features of the TRIPS (Travel Planning Information Reservations Systems) invention. Upon a close read of the DeLorme, the disclosure reveals that the invention relates to a computerized system for travel information queries. For example, the DeLorme invention allows a user to carry out a travel planning session centered around the topic of “coral reefs” and “scuba-diving.” *See* DeLorme, col. 37, lines 64-67. A planning session will provide the user with maps, travel directions and supplemental text, audio or graphics about specific locations or points of interest. The system is ultimately designed to create an individualized travel plan in response to user input of 1) WHERE? (Places), 2) WHAT?/WHO? (Topics), 3) WHEN? (Times), and/or 4) HOW TO GO & HOW MUCH COST? (Accounts). *See* DeLorme, page 16, lines 60-65. However, the disclosure does not describe software programs with “user-customizable” or “reconfigurable” characteristics, as defined in Applicants’ claim limitations. Though DeLorme describes the TRIPS’ capability to produce “*customized* or individualized outputs ... by different individuals in pursuit of personal travel objectives,” the invention does not contemplate the type of customizability as found in Applicants’ invention. DeLorme produces customizable *output* via personalized travel plans, but never discloses the characteristic of customizable *software* programs. In summary, DeLorme merely is concerned with gathering user input parameters and carrying out travel plan searches.

In contrast to DeLorme, Applicants’ invention is claimed as comprising a “user-customizable or reconfigurable *software* program.” Claims 37 and 52 (emphasis added). First, to explain the extent of the software *customizability* of the present invention and why such customizability differentiates over DeLorme, Applicants stress that the software includes one or more functional modules. *See* Applicants’ Specification, page 14, paragraph 1. Secondly, such

modules may be “*omitted or uninstalled*” to improve performance and the “communication module being *partitionable or uninstallable* as a functional component.” Specification, page 14, paragraph 2; Claims 37 and 52, respectively. Additionally, the software can be *updated*. See Applicants’ Specification, page 11, lines 9-16. Therefore, from this language we learn that Applicants’ invention comprises a unique software arrangement on a cellphone which may be customized or reconfigured by the user through installing or uninstalling portions of software modules, and further having the capability to update such software. The user is thus given extensive control over the type of software arrangement on the cellphone and is not subject to a fixed, pre-determined software program which is loaded by the manufacturer, as apparent in DeLorme. This important element of Applicants’ invention is captured in the language of Claims 37 and 52 and is not found in the DeLorme disclosure.

Furthermore, as stated above, Applicants’ software includes one or more functional modules. See Applicants’ Specification, page 14, paragraph 2 (network and data communications, object and map database structure, object movement processing, security management, electronic transaction processing, diagnosis and/or corrective tool, performance report updater, and visual object analyzer). These functional modules are claimed to be user partitionable or uninstallable as functional components. See Claims 37 and 52. Therefore, the cellphone user herself may separate or uninstall any of the above mentioned functional modules and also update such software. The act of updating software is widely known in the art to mean downloading or installing new software versions to replace older ones and improve performance. Comparing these characteristics with DeLorme, it is understood that the disclosure does mention a similar module-type arrangement of the TRIPS system (See, e.g., TRIPS subsystems Fig. 4, “TOPICS” 415, “PLACES” 417, “TIMES” 419, “ACCTS” 411; col. 36-47). However,

DeLorme does not disclose, neither expressly nor inherently, the capability of Applicants' invention of *partitionable or uninstalleable* and *updatable* software components or modules. Thus, DeLorme discloses software subsystems, but fails to disclose the capability of adding, removing and updating such subsystems. Therefore, it is for this distinction that Applicants argue that the DeLorme reference does not disclose all of the elements of the present invention as claimed.

In conclusion, Examiner has attempted to reject independent Claims 37 and 52 as being anticipated by DeLorme. In order to do so, Examiner has the burden of proving that "each and every element" of the claimed invention is found in the prior art reference. *See* MPEP §2131. Examiner has not met this burden as DeLorme does not disclose all elements of the present claims. Specifically, claim language reading "user-customizable or reconfigurable software" and software modules "being partitionable or uninstalleable" as functional components is not found in DeLorme, either expressly or inherently. Therefore, DeLorme does not comprise this important element of Applicants' claimed invention and the rejection of independent Claims 37 and 52 under §102(e) must be withdrawn.

ii. Claim 54

In setting forth the rejection of Claim 54 under §102(e) as being anticipated by DeLorme, Examiner has completely failed to address the language of the present claim. Claim 54 reads:

The method of Claim 52 wherein: the cellphone user voice or image is recognized from the image, audio or video signal.

This language is not found in Examiner's rejection of Claim 54 as set forth in section 3 of the 10/13/2005 office action. Therefore, Examiner has not met the burden of proving that

each and every element of the claimed invention is found in the prior art reference and the rejection of Claim 54 should be withdrawn.

iii. Claims 38, 42, 44, 53, 57, and 59

The remaining Claims 38, 42, 44, 53, 57, and 59 are dependent claims of independent Claims 37 and 52. As argued above, Claims 37 and 52 are patentable under §102(e) over DeLorme as each an every element of the independent claims have not been found in the prior art. Therefore, the rejection of dependent Claims 38, 42, 44, 53, 57, and 59 must be withdrawn.

B. The rejection of Claim 39 as unpatentable under 35 U.S.C. § 103(a) over DeLorme et al. (US 5,948,040) in view of Hollenberg (US 6,091,956) should be withdrawn.

The issue here is whether Claim 39 is obvious under §103(a) over the combination of DeLorme and Hollenberg. Examiner contends that it would have been obvious to one of ordinary skill to modify and combine the voice-recognition function of DeLorme and the camera of Hollenberg, to arrive at Applicants' claim language which comprises:

a camera capable of recording the image, audio or video signal and recognizing the cellphone user voice or image.

Applicants stress that the language of Claim 39 discloses *image and voice recognition* capabilities. Looking to the references, Hollenberg merely discloses a digital camera for recording image and video information. DeLorme merely discloses *voice recognition* functions, but does not disclose image recognition.

If the proposed modification or combination of the prior art would change the principle of the operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349

(CCPA 1959); *see* MPEP §2143.01. The Court held that the “suggested combination of references would require a *substantial reconstruction and redesign* of the elements shown in [the primary reference] as well as a *change in the basic principle* under which the [primary reference] construction was designed to operate.” 270 F.2d at 813, 123 USPQ at 352 (emphasis added).

As contended by Examiner, the proposed modification of the primary reference of DeLorme is to modify the voice-recognition function to further comprise *image-recognition* capabilities, based upon a digital camera disclosed by Hollenberg. This would require a substantial modification and redesign of the voice-recognition elements of DeLorme to satisfy image-recognition functionality. It is known in the art that the processing of audio information is substantially different than the processing of visual information and thus the proposed modification of DeLorme would require a changing in the basic principle under which the prior art was designed to operate.

In conclusion, the modification and combination of DeLorme and Hollenberg to reject Claim 39 as obvious under §103(a) is improper. The proposed modification of the *voice-recognition* capability of DeLorme in view of Hollenberg to accompany *image-recognition* functions would change the principle of operation of the prior art. Substantial reconstruction and redesign would be required to modify voice-recognition to image-recognition functions. Therefore, the rejection of Claim 39 as obvious under §103(a) over the combination of the prior art references must be withdrawn.

C. The rejection of Claims 43 and 58 as unpatentable under 35 U.S.C. 103(a) over DeLorme et al. (US 5,948,040) in view of Heikari et al. (US 5,930,723) should be withdrawn.

Claims 43 and 58 are rejected by Examiner under §103(a) as obvious over the combination of DeLorme and Heikari. To establish a *prima facie* case of obviousness, one requirement is that the prior art references must teach or suggest all the claim limitations. *See* MPEP §2143. Examiner has failed to satisfy this burden here.

The present claims read language comprising a “group of cellphones chatting privately in multi-case mode using an *embedded watermark or digital certificate*.” Claims 43 and 58. Examiner contends that the forgoing element is found in Heikari (i.e., name, number or address in col. 6). Reading the relevant text of this reference merely reveals that Heikari discloses a mobile communication message that contains “the identifier of the calling party,” “message identifier,” “list of group numbers,” and “area of operation.” Heikari, col. 6. This vague language does not sufficiently disclose the level of specificity required in describing security features and identifying methods as *embedded watermarks and digital certificates*. In fact, there is no language in the entire text of Heikari which discloses the use of an embedded watermark or digital certificate, as required by Claims 43 and 58. It is well-known that embedded watermarks and digital certificates are specialized computer security methods that comprise public-key cryptography technology which are attestations by a certificate authority as to the pairing of identification and public key information. Such technology is not found in Heikari.

Therefore, without teaching or suggestion of all of the claim limitations in Heikari, Examiner’s rejection under §103(a) must fail and Claims 43 and 58 must be allowed.

D. The rejection of Claims 40-41, 55-56 as unpatentable under 35 U.S.C. 103(a) over DeLorme et al. (US 5,948,040) in view of Joao et al. (US 6,047,270) should be withdrawn.

The rejection of Claims 40-41, and 55-56 as obvious under §103(a) over DeLorme and Joao et al. should be withdrawn. The present claims are dependent upon independent Claims 37 and 52, which have been argued above to be allowable and non-anticipatory over the primary reference of DeLorme. Therefore, dependent Claims 40-41 and 55-56 should be allowed.

E. The rejection of Claims 45 and 60 as unpatentable under 35 U.S.C. 103(a) over DeLorme et al. (US 5,948,040) in view of McGregor et al. (US 6,243,574 B1) should be withdrawn.

The rejection of Claims 45 and 60 as obvious under §103(a) over DeLorme and McGregor et al. should be withdrawn. The present claims are dependent upon independent Claims 37 and 52, which have been argued above to be allowable and non-anticipatory over the primary reference of DeLorme. Therefore, dependent Claims 45 and 60 should be allowed.

F. The rejection of Claims 46 and 61 as unpatentable under 35 U.S.C. 103(a) over DeLorme et al. (US 5,948,040) in view of Rudrapatna et al. (US 6,052,598) should be withdrawn.

The rejection of Claims 40-41, and 55-56 as obvious under §103(a) over DeLorme and Joao et al. should be withdrawn. The present claims are dependent upon independent Claims 37 and 52, which have been argued above to be allowable and non-anticipatory over the primary reference of DeLorme. Therefore, dependent Claims 40-41 and 55-56 should be allowed.

G. The rejection of Claims 47-48 and 62-63 as unpatentable under 35 U.S.C. 103(a) over DeLorme et al. (US 5,948,040) in view of Kennedy, III et al. (US 6,301,480) should be withdrawn.

The rejection of Claims 47-48 and 62-63 as obvious under §103(a) over DeLorme and Kennedy should be withdrawn. The present claims are dependent upon independent Claims 37 and 52, which have been argued above to be allowable and non-anticipatory over the primary reference of DeLorme. Therefore, dependent Claims 47-48 and 62-63 should be allowed.

H. The rejection of Claims 49 and 64 as unpatentable under 35 U.S.C. 103(a) over DeLorme et al. (US 5,948,040) in view of David et al. (US 5,441,047) should be withdrawn.

The rejection of Claims 49 and 64 as obvious under §103(a) over DeLorme and David et al. should be withdrawn. The present claims are dependent upon independent Claims 37 and 52, which have been argued above to be allowable and non-anticipatory over the primary reference of DeLorme. Therefore, dependent Claims 49 and 64 should be allowed.

I. The rejection of Claims 50 and 65 as unpatentable under 35 U.S.C. 103(a) over DeLorme et al. (US 5,948,040) in view of Uppaluru (US 5,915,001) should be withdrawn.

The rejection of Claims 50 and 65 as obvious under §103(a) over DeLorme and Uppaluru et al. should be withdrawn. The present claims are dependent upon independent Claims 37 and 52, which have been argued above to be allowable and non-anticipatory over the primary reference of DeLorme. Therefore, dependent Claims 50 and 65 should be allowed.

J. The rejection of Claims 51 and 66 as unpatentable under 35 U.S.C. 103(a) over DeLorme et al. (US 5,948,040) in view of Almeida et al. (US 6,356,758) should be withdrawn.

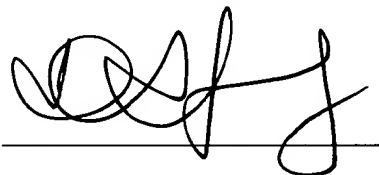
The rejection of Claims 51 and 66 as obvious under §103(a) over DeLorme and Joao et al. should be withdrawn. The present claims are dependent upon independent Claims 37 and 52, which have been argued above to be allowable and non-anticipatory over the primary reference of DeLorme. Therefore, dependent Claims 51 and 66 should be allowed.

CONCLUSION

For all of the reasons stated above, Appellants respectfully conclude that Examiner was in error to reject independent Claims 37 and 52 under §102(e) over the primary reference of DeLorme; dependent Claims 38, 42, 44, 53, 54, 57, and 59 under §102(e) over DeLorme; and Claims 39, 43 and 58, 40-41 and 55-56, 45 and 60, 46 and 61, 47-48 and 62-63, 49 and 64, 50 and 65, and 51 and 66 under §103(a). Therefore, Appellant prays for careful consideration of this appeal by the Board of Patent Appeals and Interferences in order for the ultimate allowance of all Claims 37-66.

Respectfully Submitted,

FERNANDEZ & ASSOCIATES, LLP

A handwritten signature in black ink, appearing to read 'Dennis S. Fernandez', written over a horizontal line.

Date: 2/9/2007

Dennis S. Fernandez, ESQ.
Reg. No. 34,160

Fernandez & Associates, LLP
Customer No. 22877
(650) 325-4999

VIII. Claims Appendix

Claims Presented For Appeal (as filed via Rule-116 Amendment dated 11/01/2005)

1-36. (CANCELED)

37. (PREVIOUSLY PRESENTED) Cellphone for communicating with a networked controller comprising:

a wireless communicator for communicating remotely with a networked controller via a network;

a locator for providing a cellphone location to the networked controller via the wireless communicator;

a sensor for providing an image, audio, or video signal of a cellphone user for transmission to the networked controller via the wireless communicator; and

a processor for accessing a communication module for enabling voice or video over Internet-Protocol streaming via the wireless communicator, the communication module comprising a user-customizable or reconfigurable software program, firmware or circuit accessible locally in the cellphone or remotely via the network, the communication module being partitionable or uninstallable as functional component, the voice or video stream being wirelessly communicated by the wireless communicator effectively via a data channel to a wireless Internet service provider;

wherein the communication module is provided in layered or hierarchical arrangement, such that a first-level functionality is provided by a database and an object movement module, and a next-level functionality is provided by the communication module and a security module.

38. (PREVIOUSLY PRESENTED) The cellphone of Claim 37 wherein:

the locator comprises a global positioning satellite (GPS) receiver.

39. (PREVIOUSLY PRESENTED) The cellphone of Claim 37 wherein:

the sensor comprises a camera capable of recording the image, audio or video signal, and recognizing the cellphone user voice or image.

40. (PREVIOUSLY PRESENTED) The cellphone of Claim 37 further comprising:

a processor for running a transaction program for metering usage by the cellphone user.

41. (PREVIOUSLY PRESENTED) The cellphone of Claim 40 wherein:

the processor enables a local advertisement message that is pertinent to the cellphone location to be presented to the cellphone user.

42. (PREVIOUSLY PRESENTED) The cellphone of Claim 40 wherein:

the processor runs a simulation of a cellphone user movement or behavior.

43. (PREVIOUSLY PRESENTED) The cellphone of Claim 37 wherein:

the wireless communicator communicates within a group of cellphones chatting privately in multi-cast mode using an embedded watermark or digital certificate, thereby securing such group communication electronically.

44. (PREVIOUSLY PRESENTED) The cellphone of Claim 37 wherein:

the wireless communicator communicates within a restricted temporal or geographic range for transaction, thereby enabling cellphone transactions only during unrestricted time or location.

45. (PREVIOUSLY PRESENTED) The cellphone of Claim 37 wherein:

the wireless communicator receives electronically a media stream or application program from the network controller according to transaction subject to a tax rate at the cellphone location.

46. (PREVIOUSLY PRESENTED) The cellphone of Claim 37 wherein:

the locator provides a location based temporarily on the cellphone acceleration or signal triangulation, thereby enabling the cellphone location to be provided during a wirelessly-inaccessible down period.

47. (PREVIOUSLY PRESENTED) The cellphone of Claim 37 wherein:

the sensor provides a medical monitoring signal from sensing physically a biological condition of the cellphone user, thereby enabling health-care service according to a health-insurance coverage of the cellphone user.

48. (PREVIOUSLY PRESENTED) The cellphone of Claim 37 wherein:

the sensor provides a vehicle diagnostic signal from sensing electronically a mechanical condition of an automobile coupled to the cellphone, thereby enabling a neural network to diagnose the automobile adaptively.

49. (PREVIOUSLY PRESENTED) The cellphone of Claim 37 wherein:

the sensor provides a residential surveillance signal from sensing a security condition of personal property coupled to or nearby the cellphone, thereby enabling remote surveillance of such property movement or safety.

50. (PREVIOUSLY PRESENTED) The cellphone of Claim 37 wherein:

the wireless communicator receives electronically an audio/visual signal from the network controller according to an extensible markup language (XML) tag or software agent associated with the audio/visual signal, thereby enabling advertisement for local goods or services to be included with the audio/visual signal based upon the cellphone location.

51. (PREVIOUSLY PRESENTED) The cellphone of Claim 37 wherein:

the image, audio or video signal is provided in a multi-media simulation program to represent the cellphone user and location in three-dimensions, virtual-reality or holographically.

52. (PREVIOUSLY PRESENTED) Method for cellphone communication with a networked controller comprising the steps of:

communicating by a cellphone with a networked controller via a network; and

providing a cellphone location, and an image, audio, or video signal of a cellphone user to the networked controller;

wherein the cellphone accesses a communication module for enabling voice or video over Internet-Protocol streaming, the communication module comprising a user-customizable or reconfigurable software program, firmware or circuit accessible locally in the cellphone or remotely via the network, the communication module being partitionable or uninstallable as functional component, the voice or video stream being wirelessly communicated effectively via a data channel to a wireless Internet service provider;

wherein the communication module is provided in layered or hierarchical arrangement, such that a first-level functionality is provided by a database and an object movement module, and a next-level functionality is provided by the communication module and a security module.

53. (PREVIOUSLY PRESENTED) The method of Claim 52 wherein:

the cellphone location is provided by a global positioning satellite (GPS) receiver.

54. (PREVIOUSLY PRESENTED) The method of Claim 52 wherein:

the cellphone user voice or image is recognized from the image, audio or video signal.

55. (PREVIOUSLY PRESENTED) The method of Claim 52 wherein:

a processor runs a transaction program for metering usage by the cellphone user.

56. (PREVIOUSLY PRESENTED) The method of Claim 55 wherein:

the processor enables a local advertisement message that is pertinent to the cellphone location to be presented to the cellphone user.

57. (PREVIOUSLY PRESENTED) The method of Claim 55 wherein:

the processor runs a simulation of a cellphone user movement or behavior.

58. (PREVIOUSLY PRESENTED) The method of Claim 52 wherein:

the cellphone communicates within a group of cellphones chatting privately in multi-cast mode using an embedded watermark or digital certificate, thereby securing such group communication electronically.

59. (PREVIOUSLY PRESENTED) The method of Claim 52 wherein:

the cellphone communicates within a restricted temporal or geographic range for transaction, thereby enabling cellphone transactions only during unrestricted time or location.

60. (PREVIOUSLY PRESENTED) The method of Claim 52 wherein:

the cellphone receives electronically a media stream or application program from the network controller according to transaction subject to a tax rate at the cellphone location.

61. (PREVIOUSLY PRESENTED) The method of Claim 52 wherein:

the cellphone location is provided temporarily based on the cellphone acceleration or signal triangulation, thereby enabling the cellphone location to be provided during a wirelessly-inaccessible down period.

62. (PREVIOUSLY PRESENTED) The method of Claim 52 wherein:

the cellphone provides a medical monitoring signal from sensing physically a biological condition of the cellphone user, thereby enabling health-care service according to a health-insurance coverage of the cellphone user.

63. (PREVIOUSLY PRESENTED) The method of Claim 52 wherein:

the cellphone provides a vehicle diagnostic signal from sensing electronically a mechanical condition of an automobile coupled to the cellphone, thereby enabling a neural network to diagnose the automobile adaptively.

64. (PREVIOUSLY PRESENTED) The method of Claim 51 wherein:

the sensor provides a residential surveillance signal from sensing a security condition of personal property coupled to or nearby the cellphone, thereby enabling remote surveillance of such property movement or safety.

65. (PREVIOUSLY PRESENTED) The method of Claim 52 wherein:

the cellphone receives electronically an audio/visual signal from the network controller according to an extensible markup language (XML) tag or software agent associated with the audio/visual signal, thereby enabling advertisement for local goods or services to be included with the audio/visual signal based upon the cellphone location.

66. (PREVIOUSLY PRESENTED) The method of Claim 52 wherein:

the image, audio or video signal is provided in a multi-media simulation program to represent the cellphone user and location in three-dimensions, virtual-reality or holographically.

IX. Evidence appendix

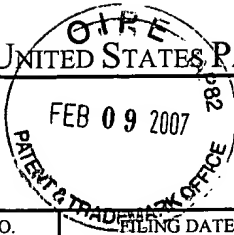
None.

X. Related proceedings appendix

None.



UNITED STATES PATENT AND TRADEMARK OFFICE



UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,089	03/29/2001	Dennis Sunga Fernandez	FERN-P001B	9469
22877	7590	01/09/2007	EXAMINER	
FERNANDEZ & ASSOCIATES LLP 1047 EL CAMINO REAL SUITE 201 MENLO PARK, CA 94025			ART UNIT	PAPER NUMBER

DATE MAILED: 01/09/2007

Please find below and/or attached an Office communication concerning this application or proceeding.

REC'D JAN 12 2007.

DOCKETED
DATE 1/12/07
fs

**Notification of Non-Compliant Appeal Brief
(37 CFR 41.37)**

Application No.

09/823,089

Applicant(s)

FERNANDEZ ET AL.

Examiner

Tung Vo

Art Unit

2621

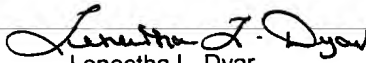
The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 29 November 2006 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.
EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☒ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☒ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☐ Other (including any explanation in support of the above items):

6. Arguments: This section should include separate heading for each grounds of rejection listed in section VI. It may include headings for claims argued separately. The brief should also include the statutes and references with respect to the grounds of rejection presented.


Leneetha L. Dyar
Patent Appeal Center Specialist